

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

ROBERT J. GLADWIN, Judge

CA06-447

FEBRUARY 7, 2007

LINDA WALSTON

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F400497]

V.

MENA MEDICAL CENTER, Employer
and RISK MANAGEMENT SERVICES,
INS., Carrier

APPELLEES

AFFIRMED

This appeal follows the February 8, 2006 decision of the Workers' Compensation Commission (Commission) affirming and adopting the opinion of the Administrative Law Judge (ALJ) finding that appellant Linda Walston failed to prove that she sustained a compensable injury to her back on January 8, 2004. On appeal, appellant argues that the Commission erred in holding appellant to a standard of having to prove the causal connection between her injury and the incident with objective medical evidence and in failing to address certain objective medical evidence of the causal link between the incident and her injury. We affirm.

On January 8, 2004, appellant was employed by appellee as a respiratory therapist. While at work, she was seated in a chair and reached down to the floor to pick up a small

plastic nebulizer, which she had apparently dropped. She felt a sudden and immediate sharp pain, like “a gun shot to her back,” and all of her muscles pulled up and tightened from her back to her neck. Appellant stated that she had never experienced such a widespread similar pain before, nor had she previously experienced the loss of control of her bowels and bladder that occurred at the time.

Appellant reported the incident to her supervisor later that evening, and she obtained medical treatment at the emergency room of the Mena Medical Center at approximately 1:00 a.m. on January 9, 2004. She also reported that her blood pressure at that time was elevated to 128/80. She underwent an MRI and a myelogram, both of which showed a disc bulge at L4-L5. Appellant received follow-up care from Dr. Paul Tucker, a neurologist, and Dr. Scott Erwin, her family physician. Her symptoms have not improved since the incident, but have actually worsened to include: pain from the base of her skull down into both legs; occasional pain down her left leg into her toes; pain and numbness in her toes.

At the hearing before the ALJ on April 5, 2005, appellant provided the only testimony as to her alleged injury. However, her previous medical records indicated a history of chronic back pain existing from at least 1979 and included documents related to three previous specific injuries to her lower back.

Appellant sustained the first injury in 1979 while working in the accounting department at Jacuzzi Brothers. She dropped a pencil on the floor and, when she turned to pick it up, she was unable to straighten up to a standing position. She reported lower back

pain that continued and caused her to seek medical treatment, without much benefit, and remain unable to work for more than two years. She was treated conservatively and was evaluated by a number of specialists associated with lumbar spine injuries, as well as a clinical psychologist. The medical records show radiographic tests revealing the existence of a disc protrusion or bulge at the L4-L5 level, as well as symptoms essentially identical to the ones appellant attributes to the January 8, 2004 incident. Her physicians eventually questioned the physical basis for her continued complaints and opined that they seemed to significantly exceed what should be expected in light of the minor objective findings.

The second reported employment-related injury occurred on or about February 25, 1988, while she was working at St. Joseph Hospital in Hot Springs, Arkansas. Appellant was transporting various respiratory equipment from one floor to another when the equipment shifted while she was exiting an elevator. As she reached to lift and stabilize the equipment, she injured her lower back. That injury involved appellant's cervical spine, and although the mechanics of the injury are somewhat different, her lower back symptoms were virtually the same as with the 1979 and 2004 injuries. Diagnostic tests including a myelogram and enhanced CT scan revealed strikingly similar results of disc desiccation or dehydration at the L4-5 level and L5-S1 level and mild to moderate bulging of the L4-5 disc. Treatment for this injury lasted at least through September 1989, was conservative in nature, and produced little benefit. Appellant's physicians again questioned the validity of her continued extensive subjective symptoms when compared to the diagnostic findings.

In October 1994, appellant was involved in a motor-vehicle accident, which resulted in complaints of her lumbar and cervical spine similar to those related to the 1979 and 1988 injuries. She remained under medical care and was unable to work at least through July 1995. Then on March 12, 1996, she was seen for complaints involving pain in her lower back and down both legs to her feet, as well as her neck, following a change in the “line of work” she was performing.

The ALJ issued an opinion on June 17, 2005, finding that appellant failed to prove that she sustained a compensable injury to her back on January 8, 2004. Specifically, the ALJ found that, with the exception of her reported loss of bowel and bladder control, which was not objectively substantiated, appellant’s current symptoms appeared to be “identical in type and magnitude with those she voiced after the employment-related incident in 1979, after the reported employment-related incident in 1988, and after the motor-vehicle accident in 1994.” The ALJ also found that, as was the case with the previous three incidents, appellant’s symptoms remained unimproved with time or treatment and the extent and magnitude of her subjective symptoms appeared to far exceed the objective findings. On February 8, 2006, the Commission entered its opinion affirming and adopting the ALJ’s opinion. Appellant filed a timely notice of appeal on February 21, 2006.

Typically, on appeal to this court, we review only the decision of the Commission, not that of the ALJ. *Daniels v. Affiliated Foods S. W.*, 70 Ark. App. 319, 17 S.W.3d 817 (2000). In this case, the Commission affirmed and adopted the ALJ’s opinion as its own, which it is

permitted to do under Arkansas law. *See Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003). Moreover, in so doing, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the Commission. *See Branum, supra*. Therefore, for purposes of our review, we consider both the ALJ's order and the Commission's majority order.

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *See Kimbell v. Assoc. of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, ___ S.W.3d ___ (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* Where the Commission denies a claim because of the claimant's failure to meet his burden of proof, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, ___ S.W.3d ___ (2005).

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Patterson v. Ark. Dep't of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d. 519 (2005). As our law currently stands, the Commission hears workers' compensation claims de novo on the basis of the record before the ALJ pursuant to Ark. Code Ann. § 11-9-704(c)(2), and this court has stated that we defer to the Commission's authority to disregard the testimony of any witness, even a claimant, as not credible. *See Bray v. Int'l Wire Group*, 95 Ark. App. 206, ___ S.W.3d ___ (2006).

Appellant argues that the ALJ erroneously held her to a previously rejected standard of requiring objective medical evidence to prove the causal connection between the incident and the injury. She points out that in *Liaromatis v. Baxter County Reg. Hosp.*, 95 Ark. App. 296, ___ S.W.3d___ (2006), this court agreed that "objective medical evidence is not essential

to establish the causal relationship between the injury where objective medical evidence establishes the injury's existence, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident.” *Id.* at 299, ___ S.W.3d at ___.¹

Appellees maintain that her argument is without merit, and that the ALJ merely held appellant to the statutorily required standard of showing an “objective finding” of an actual injury. The ALJ reviewed the extensive preexisting history, which included at least three prior low-back injuries with substantially identical symptoms and treatment. The ALJ compared the medical evidence related to the previous injuries, including test results and treatment details and outcomes, with the most recent medical reports and tests, and determined that there were no new objective findings in existence after the alleged January 8, 2004 injury. When the results of the MRI taken on March 24, 2004, and the myelogram taken on August 17, 2004, are compared with the pre-existing studies related to appellant's earlier injuries in 1979, 1988, and 1994, it is clear that no objective changes or findings of a new injury occurred. Appellant failed to present any proof of changes related to the alleged January 8, 2004 injury through a comparison of the study results.

Appellant's only additional argument regarding an objective finding is that she presented with elevated blood pressure when she was treated in the emergency room, and that

¹However, the court disagreed with appellant's premise that the medical evidence must merely establish the existence of the injury and held that the question is not whether there are new objective findings, but whether there is a new compensable injury. It is the injury for which a claimant seeks benefits that must be proved with objective medical findings

this was somehow caused by her pain related to an injury she must have sustained near that time. Appellees point out that there is a complete absence of proof from any medical provider that the mere fact that someone's blood pressure is allegedly "elevated" would have a direct correlation to or be caused by "pain" whether or not any alleged injury exists. Appellees contend that the lack of any such evidence would require the Commission and this court to engage in pure speculation and conjecture to reach the conclusion put forth by appellant, which does not replace the required proof. *See Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Additionally, appellant failed to present proof as to her "normal" blood pressure and gave no explanation as to whether she was, or had been, treated for high blood pressure or was taking blood-pressure medication. Appellees point out that the normal blood-pressure range for most individuals is 120/80, and assert that a reading of 128/80, without additional evidence of an abnormally low average, is not a sufficient elevation to provide a reliable basis for determining the existence of an objective finding to support compensability.

We agree with the decisions of both the ALJ and the Commission that, based upon the existing medical evidence related to this alleged injury compared to the prior injuries, there is no new objective finding to support a compensable injury. Accordingly, we affirm.

Affirmed.

BIRD and BAKER, JJ., agree.